

# Part 2:

## Laws effective beginning July 1, 2005

The changes and information contained in the following sections will become effective on July 1, 2005.

### 1. Future Tax Determination

#### Change to Point of Delivery Sourcing

The point of delivery is where a purchaser takes possession of tangible personal property or makes first use of a service, whichever comes first. The sales tax rate to charge will be determined by the point of delivery.

For example, if a purchaser receives goods at the business location of a seller, the location of the transaction is the business location of the seller. The sale is sourced to the address of the business. If the seller delivers the goods to his or her customer, the location of the transaction is where the business delivers the goods (i.e., where the customer receives the goods). Receive or receipt does not include possession of goods by a shipping company on behalf of the purchaser.

The purchaser's nine-digit ZIP code determines the location of a transaction when goods or services are delivered. If a nine-digit ZIP code is located within two or more jurisdictions, the seller should collect and report tax at the jurisdiction with the lowest rate that is applicable anywhere in the nine-digit ZIP code area.

#### Exclusions from Point of Delivery Sourcing

1. Tangible personal property contracts signed prior to July 1, 2005, but completed after that date are not subject to the point of delivery sourcing rules (e.g., furniture sold before July 1, 2005, but delivered on or after July 1, 2005).
2. The SST Agreement provides states with the option of allowing florists to continue to tax transactions at the point of sale. Utah florists will continue to collect and report transactions based on point of sale through Dec. 31, 2005.
3. The switch to point of delivery sourcing for annual filers will not take effect until Jan. 1, 2006.

#### Utah's Future General Sourcing Rules

The sourcing rules shown in Figure 3 (page 9) will go into effect July 1, 2005.

### 2. Future Filing Information

#### Forms and Filing Requirement Changes

Due to the change from point of sale to point of delivery sourcing, all sellers that make deliveries, mail, or ship goods to purchasers will be required to fill out TC-61 Schedule PS **and** TC-61 Schedule PD, in addition to the TC-61 return. The TC-61 Schedule PS will still be used to report the point of sale. The current TC-61 Schedule PSD will be changed to TC-61 Schedule PD, and will be used to report and calculate tax due based on point of delivery. You can view the forms and instructions that will be used for periods starting on or after July 1, 2005 at [tax.utah.gov/sst](http://tax.utah.gov/sst).

#### TC-61 Schedule PS

The Utah Legislature inserted a clause into Streamlined Sales Tax legislation to protect and preserve the 1 percent funding base of all local governments within Utah. This means that although a sale is taxed at the point of delivery, the 1 percent local tax will continue to be distributed to Utah's local jurisdictions based on the point of sale. Information on TC-61 Schedule PS makes this possible.

This schedule does not require any tax calculations on the part of the seller. The seller is only reporting the amount of taxable sales at the locations where they occur.

Figure 3

## Future General Sourcing Rules

Category of Transaction	Location of Transaction (Sourcing) Utah Code §§59-12-207.1, 59-12-207.2, 59-12-207.3
<b>Retail Sale of:</b> <ul style="list-style-type: none"> <li>• Tangible Personal Property (includes electronic or digital goods)</li> <li>• Taxable Services</li> <li>• Transportation Equipment (aircraft, trains, railcars, motor carriers, trailers, semi-trailers, and passenger buses operating under federal certification and engaged in interstate commerce)</li> </ul> <b>Lease or Rental of:</b> <ul style="list-style-type: none"> <li>• Transportation Equipment</li> </ul>	<ol style="list-style-type: none"> <li>(1) When received by purchaser at business location of seller, sale sourced to that business location.</li> <li>(2) When not received at business location, sale sourced to location where received by purchaser, including digital goods received electronically.</li> <li>(3) If (1) or (2) do not apply, sourced to address of purchaser from seller's business records.</li> <li>(4) If (1), (2) or (3) do not apply, sourced to address of purchaser obtained during consummation of transaction.</li> <li>(5) If (1), (2), (3), or (4) do not apply, sourced to address from which property was shipped, from which electronic goods were first available for transmission by a seller, or from which a service was provided.</li> </ol>
<b>Retail Sale of:</b> <ul style="list-style-type: none"> <li>• Manufactured Homes</li> <li>• Modular Homes</li> <li>• Mobile Homes</li> <li>• Motor Vehicles or Aircraft that are not Transportation Equipment (see definition above)</li> <li>• Watercraft</li> </ul>	<ol style="list-style-type: none"> <li>(1) If sold by a dealer, sourced to business location of the dealer.</li> <li>(2) If sold by person other than a dealer, sourced to street address of registration.</li> <li>(3) If not required to be registered, sourced to street address where the purchaser of the property resides.</li> </ol>
<b>Lease or Rental of:</b> <ul style="list-style-type: none"> <li>• Tangible Personal Property (includes electronic or digital goods)</li> <li>• Taxable Services</li> <li>• Manufactured Homes</li> <li>• Modular Homes</li> <li>• Mobile Homes</li> <li>• Watercraft</li> </ul>	<ol style="list-style-type: none"> <li>(1) If there are no recurring periodic payments, sourced the same as a retail sale of tangible personal property.</li> <li>(2) If lease or rental requires recurring periodic payments, down payment and first payment are sourced the same as a retail sale of tangible personal property. Subsequent periodic payments are sourced to primary property location.</li> </ol>
<b>Lease or Rental of:</b> <ul style="list-style-type: none"> <li>• Motor Vehicles or Aircraft that are not Transportation Equipment (see definition above)</li> </ul>	<ol style="list-style-type: none"> <li>(1) If there are no recurring periodic payments, sourced the same as retail sale for tangible personal property.</li> <li>(2) If lease or rental requires recurring periodic payments, down payment and each recurring payment is sourced to primary property location.</li> </ol>

The following sellers are required to complete form TC-61 Schedule PS **and** Schedule PD:

- A seller that delivers goods or services from either a fixed place or non-fixed place of business in Utah, or ships goods directly from out-of-state to Utah consumers.
- A seller that has more than one fixed location or a seller that stores, uses, or consumes tangible personal property at various places in Utah other than a fixed place of business (e.g. construction contractors).
- A seller that sells goods exempt from resort tax.
- A seller that has direct pay transactions (see definition on page 12).
- A seller that has direct mail transactions (see definition on page 13).
- A vending machine operator, a multi-level marketing company with a signed agreement, or a purchaser using a Multiple Points of Use (MPU) Exemption Form (see definition on page 13).
- A seller that performs taxable services at the customer's location.
- A leasing company.
- A utility or telecommunications provider.

**NOTE:**

A seller that does not fit into any of the previous categories should not complete the TC-61 Schedule PS, even though the schedule is printed on the reverse side of the TC-61. Also, the seller should not complete or submit the TC-61 Schedule PD. The seller should only complete the TC-61 return.

## TC-61 Schedule PD

All sellers that are required to fill out TC-61 Schedule PS **must** also fill out TC-61 Schedule PD. On Schedule PD, filers will record sales in the jurisdiction where goods are delivered. The tax due amount will be calculated on Schedule PD, just as it is on the current Schedule PSD.

## Resources and Tools

### ZIP+4 Databases

The Tax Commission will maintain a database that contains all of the tax rates for all locations within Utah. The database will be available in a flat file format or web-based application. See the Tax Commission's website, [tax.utah.gov/taxrate](http://tax.utah.gov/taxrate), for a link to the database.

### Flat File Format

- The file ties each ZIP+4 and each five-digit ZIP code to a jurisdiction and tax rate.
- The file is available on a CD or may be downloaded from the Tax Commission's website.
- Users have the option to select all or select only those counties that they would like to download.
- Instructions and system requirements are provided.
- The file is updated quarterly.

### Web-Based Application

- Users may look up tax rates and corresponding jurisdictions by entering the nine-digit ZIP code (ZIP+4), five-digit ZIP code, or address and city of their customer's delivery location.
- The system will return a standardized address (when the taxpayer has included an address), the jurisdiction code and the appropriate tax rate.

Sellers that rely on the Tax Commission's rate databases are not liable for failing to collect and remit the proper tax if the tax rate at which the seller collected was derived from the databases.

## Sales and Use Tax Rate Chart

The Tax Commission publishes a sales and use tax rate chart quarterly. This chart contains all taxing jurisdictions with the corresponding county/city code and combined sales tax rate, along with the county/city code that is used for TC-61 Schedule PD. This chart is found at [tax.utah.gov/sales/rates.html](http://tax.utah.gov/sales/rates.html) or can be requested by calling the Tax Commission. A paper copy of this rate chart is a good resource for businesses without Internet access.

## Out-of-State Voluntary (Non-Nexus) Filers

Non-nexus businesses that volunteer to collect and pay Utah sales and use taxes will be required to charge the full combined rate (including resort tax, if it applies) for the jurisdiction where goods are delivered. All businesses that collect Utah sales and use tax must file a return to report and remit collected tax.

## Online Filing

All filers, including annual filers, will be eligible to file the TC-61 return and schedules online.

## Annual Filers

Annual filers will be required to file the TC-61 return and schedules based on point of sale for filing period January-December 2005. For filing period January-December 2006, annual filers will be required to use point of delivery sourcing.

### 3. Future Changes in Taxability

The following changes to definitions and taxability take effect on July 1, 2005.

#### Tangible Personal Property

Tangible personal property means personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, prewritten software, and digital and electronic goods.

An exemption for sales of water in a pipe, conduit, ditch, or reservoir has been adopted to address the change in definition.

#### Purchase Price/Sales Price

Purchase or sales price means the total amount paid or charged for tangible personal property or services that are sold, leased or rented. The purchase or sales price will include:

- the seller's cost of the tangible personal property or services sold.
- expenses of the seller: materials, labor, service cost, interest, loss, transportation, or a tax imposed on the seller.
- charges by the seller for any service necessary to complete the sale.
- delivery charges (see explanation below).
- installation charges (see explanation below)
- repair charges (see explanation below).

The purchase or sales price does not include a discount in the form of cash, term or coupon that is allowed by a seller and taken by a purchaser on a sale that is not reimbursed by a third party.

The purchase or sales price does not include the following if separately stated on the invoice:

- trade-ins,
- credit extended for interest, finance, or carrying charges, or
- a tax or fee legally imposed directly on the consumer.

#### Delivery Charges

Any charges by a seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating and packing, are included in the purchase price. Freight charges in connection with the sale of tangible personal property are included in the amount subject to sales tax regardless of the F.O.B. designation.

Delivery charges are only subject to tax if the sale is a taxable transaction. Delivery charges are exempt if the sale is exempt.

#### Installation Charges

Charges for labor to install an item of tangible personal property that remains tangible personal property are included in the amount subject to tax. The following examples illustrate this point:

- An installer sets up a piece of equipment, screws it into the floor and hard wires it into the building's electrical system. Because the equipment remains tangible personal property, the installation charges are taxable.
- A seller sells and installs a satellite dish. The dish is installed by affixing it to the customer's home and running wire into the house. Although the satellite dish is connected to real property, it remains tangible personal property and charges for labor to install the dish to real property are taxable.
- A seller sells and installs insulation on above ground pipes. Because the above ground pipes are considered tangible personal property, the charges for the insulation and installation are taxable, even if separately stated on the invoice.
- A seller sells and installs kitchen cabinets in a home. The cabinets become real property. The charges for selling and installing the cabinets are not taxable. However, the seller is considered a real property contractor and is responsible for paying sales and use tax for the materials used in building and installing the cabinets.

#### Repair Charges

Sales tax applies to charges for labor and parts to repair, wash or clean an item of tangible personal property. Trade fixtures, equipment, and machinery attached to real property remain tangible personal property while so attached and all charges associated with the repair are taxable.

If the item has been converted to real property, the charges for repair labor are not taxable. However, the repairperson is considered a real property contractor and is responsible for paying sales and use tax for items that are converted to real property upon installation.

#### Document Fees

Document preparation fees associated with the sale of an item will be subject to tax.

#### Manufacturer Rebates

Manufacturer rebates for which a seller is reimbursed by a third party do not reduce the amount subject to sales tax. The amount subject to sales tax is the sales price of the item before the value of the rebate has been deducted.

#### Repossessions

A sales tax credit for bad debt may not be taken on an item that has been repossessed.

## 4. Future Exemptions

### New Exemptions

#### Drugs

A drug is a compound, substance or preparation, or a component of a compound, substance or preparation that is:

- recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or a supplement to their publications,
- intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, or
- intended to affect the structure or any function of the body.

Sales of drugs are exempt only if the drugs are sold by prescription or if they are purchased by a hospital or other medical facility.

Drug does not include food and food ingredients, a dietary supplement, an alcoholic beverage, or a prosthetic device.

#### Durable Medical Equipment and Supplies

Durable medical equipment is equipment that:

1. can withstand repeated use,
2. is primarily and customarily used to serve a medical purpose,
3. generally is not useful to a person in the absence of illness or injury,
4. is not worn in or on the body, and
5. is listed as eligible for payment under the Social Security Act.

Durable medical equipment includes parts used in the repair or replacement of the equipment. Sales or rentals of durable medical equipment are exempt only if the purchaser presents a prescription for the durable medical equipment. Examples of durable medical equipment include pumps used to recharge oxygen bottles, a hospital bed used in the home, etc.

#### Mobility Enhancing Equipment

Mobility enhancing equipment is equipment that is:

1. primarily and customarily used to provide or increase the ability to move from one place to another,
2. appropriate for use either in a home or a motor vehicle,
3. not generally used by persons with normal mobility, and
4. eligible for payment under the Social Security Act.

Mobility enhancing equipment includes parts used in the repair or replacement of the equipment. Mobility enhancing equipment does not include:

- a motor vehicle,
- equipment on a motor vehicle normally provided by the motor vehicle manufacturer,
- durable medical equipment, or
- a prosthetic device.

Sales or rentals of mobility enhancing equipment are exempt only if the purchaser presents a prescription for the mobility enhancing equipment. Examples of mobility enhancing equipment include wheelchairs, crutches, walkers, canes, etc.

#### Prosthetic Devices

A prosthetic device includes:

- parts used in the repair or renovation of a prosthetic device, or
- replacement parts for a prosthetic device.

Sales of prosthetic devices are exempt only if the purchaser presents a prescription for the device. A prosthetic device does not include corrective eyeglasses, contact lenses, or dental prostheses.

### Handling of Exemptions

#### Direct Pay

A direct pay permit allows a seller to purchase taxable goods and services without payment of tax to the supplier at the time of purchase. The holder of the direct pay permit then determines the taxability and reports and pays the tax due directly to the Tax Commission. A seller must apply to the Tax Commission for a direct pay permit.

The permit may only be issued to a seller that:

1. is licensed in Utah,
2. is required to remit taxes monthly by EFT,
3. has a record of timely payment of taxes, and
4. has the ability to determine the appropriate location for each transaction.

The permit may not be used for the amounts paid or charged for:

- prepared food, and food and food ingredients, if purchased in the same transaction,
- lodging accommodations,
- admission or user fees,
- a motor vehicle, aircraft, watercraft, modular home, manufactured home, or mobile home,
- commercial use of fuel, or
- for the amounts paid to a common carrier, telephone service provider or telegraph corporation for all transportation, telegraph and telephone service (other than intrastate mobile telecommunications service and only to the extent permitted by federal law), which occur within the boundaries of this state.



The permit holder or purchaser must present the permit at the time of purchase. The tax is reported and paid at the time the permit holder's monthly sales tax return is due. The Tax Commission may revoke a direct pay permit at any time if the permit holder fails to comply with these provisions.

The seller who is presented with the permit at the time of purchase must retain records for a period of three years, which verify that the transaction was made using a direct pay permit.

## Direct Mail

Direct mail is printed material delivered or distributed by U.S. mail or other delivery service to a mass audience or to addresses on a mailing list where the cost of the printed material is not billed directly to the recipients. Direct mail includes tangible personal property supplied directly or indirectly by a purchaser to a seller of direct mail for inclusion in a package containing the printed material. Direct mail does not include multiple items of printed material delivered to a single address.

The direct mail exemption allows a purchaser to purchase direct mail without payment of the sales tax to the seller at the time of the sale. The user of the direct mail exemption then determines the taxability and reports and pays the tax due directly to the Tax Commission.

## Multiple Points of Use (MPU)

If a business purchaser, who is not a holder of a direct pay permit, knows at the time of the purchase of a service, prewritten computer software delivered electronically, or a digital good, that it will be concurrently available for use in more than one location, the purchaser will:

1. deliver to the seller at the time of purchase, a Multiple Points of Use or MPU Exemption Form,

2. apportion the purchase price among each location in which the service, prewritten computer software delivered electronically, or digital good will be concurrently available for use, and
3. report and pay the tax at the time the purchaser's regularly filed sales tax return is due.

Example: A hardware store with several outlets purchases prewritten cashing software for use in each outlet. Although this is a taxable transaction, the hardware store purchases the electronic goods tax free by submitting an MPU Exemption Form at the time of purchase. The form relieves the seller of all obligations to collect, pay and remit the tax. The hardware store apportions the purchase price among each location (TC-61 Schedule PD) in which the electronic goods will be concurrently available for use. The hardware store reports taxable sales on TC-61 Schedule PS, line D, and remits tax on the store's next sales tax return.

## Taxability Matrix

To ensure the uniform application of sales tax on products and services common to all SST member states, each state is required to maintain a taxability matrix. The taxability matrix identifies how the common product or service is taxed in the state. The state's entries in the matrix will be provided and maintained in a database that is in a downloadable format. Sellers and service providers who rely on the data provided in the taxability matrix are relieved from having incorrectly charged and collected sales or use tax if the data provided in the matrix was incorrect.

Sellers should keep in mind that the taxability matrix is limited to the common products or terms that apply to all member states. For more detailed information about what is taxable (Utah Code §59-12-103) and what is exempt (Utah Code §59-12-104) in Utah, refer to Tax Commission Pub. 25, *Sales and Use Tax General Information*.